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PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

(a) Prevention of discrimination and protection of children: human rights and youth

Letter dated 3 July 1995 from the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva addressed to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

The Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva requests that the attached document be circulated as an official document at the forty-seventh session of the Sub-Commission, under agenda item 16 (a).

(Signed): [on behalf of the Ambassador]
Miroslav Milosovíc
Counsellor

GE.95-13174 (E)

The situation of children deprived of their liberty in the Federal Republic of Yugoslavia

1. For many years, the former Yugoslavia addressed and solved all problems related to juvenile crime and, by the same token, to children deprived of their liberty, successfully, as these problems were within the bounds of what was expected, either as to the number of perpetrators, type of criminal acts or the length of sentences. The system of legal protection was adjusted to the situation and based on preventive measures and the assumption of innocence while the punishment and imprisonment policy fully respected the physical, mental and social development of juveniles.

2. The Federal Republic of Yugoslavia, the heir to that practice and policy, still has only one prison for juvenile delinquents (the Penal-Correctional Institution in Valjevo) in which persons up to 23 years of age also serve their sentences. The Federal Republic of Yugoslavia has no separate juvenile courts either, so that a specially qualified council is provided in criminal proceedings against juvenile delinquents. Jurors, equal with judges in decision-making, must possess special knowledge and experience in working with children.

3. The negative social trends and consequences of the economic and war crises and resultant depression brought about an increase in the deviant behaviour of children and, by extension, in the commission of criminal acts and infractions. Since 1990 and 1991, the years in which the war in the former Yugoslavia broke out, juvenile delinquency has increased sharply, so that in 1993 and 1994 minors committed 4,000 criminal acts, equalling the overall number of criminal acts committed in the five or six years prior to 1990.

4. According to some unofficial data, juvenile crime accounts for about 50 per cent of the total number of criminal acts committed in the Federal Republic of Yugoslavia. This brought about an increase in the number of judges for juvenile delinquents (there were one or two such judges for decades in the District Court of Belgrade while there are seven of them now). Besides, the number of minor offences has decreased while the number of grave offences, like robbery, has increased. Also, these offences are now committed with the use of force and arms. Brutality and ruthlessness are rife.

5. The root causes of these phenomena are to be found in the change of the social milieu brought about by the war in Yugoslavia's vicinity, availability of all sorts of weapons and, not least in importance, in the impoverishment of the entire society in the wake and as a consequence of the unfair and unjust United Nations sanctions which affect all fields of social life.

6. Social values change and those extolling wealth and a quick way of acquiring it are speedily superseding the ones that once extolled learning, for instance. This could not but affect the younger generation in that some young men and women are tempted to look for an easy way out. Not surprisingly, some of them end up in juvenile delinquency, the most frequent forms of which are theft and robbery.

7. This situation has not been conducive to the preventive work of social institutions and the influence of the family in the suppression of juvenile delinquency, one of the cornerstones of the juvenile protection system. Nevertheless, a juvenile delinquency prevention pilot programme of the Social Work Centre and the City Ministry of Internal Affairs has been introduced in Belgrade, capital of the Federal Republic of Yugoslavia, for children under 14 years of age. During the first three months, social workers will provide expert assistance to the families of juvenile delinquents. Next, they will step up daily non-school activities for juvenile delinquents. The success of this pilot programme will also depend on cooperation from other segments of society, particularly the educational authorities and media.

8. As to the treatment of children deprived of their liberty, efforts are being made in the Federal Republic of Yugoslavia to ensure legal protection to juveniles in the conditions and the way which guarantee them the rights to life (capital punishment is excluded), physical integrity and safety, humane treatment, separation from adult criminals in prisons, as well as all other rights provided for by the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and other relevant documents. Trying a juvenile is not a quest for a balance between deed and punishment, but for a way to help him/her not to become a criminal.

9. The decision on the detention of a juvenile during criminal proceedings is taken only exceptionally and on the basis of the decision of a judge for juvenile delinquents. A juvenile cannot be detained longer than one month. The detention can be extended by another two months by the court council for juveniles, but only after it has scrupulously considered the reasons justifying such extension.

10. A juvenile is entitled to legal assistance from the beginning of preliminary proceedings and must have legal assistance from the beginning of preliminary proceedings if the criminal act he/she has committed is punishable with over five years in prison. The judge for juvenile delinquents will determine whether a juvenile needs legal assistance in cases of criminal acts punishable with a milder punishment. Furthermore, if a juvenile, his/her legal representative or relatives do not enlist legal assistance, it will be ordered ex officio by the judge for juvenile delinquents. Legal assistance to a juvenile can be rendered only by an attorney.

11. Detention as a measure against juveniles is generally avoided since it is contrary to the goals and purpose of proceedings against juveniles and is therefore within the prosecutor's discretion. To protect them, instead of being detained, the juveniles are sent to reception centres, educational or similar institutions where, in more humane conditions and with the assistance of psychologists and pedagogues, the process of their re-socialization begins before an educational measure is determined. In determining the educational measure, the court is guided by the reports of pedagogues, psychologists and other experts and, in 90 per cent of cases, more lenient educational measures are established.

12. The following are the educational measures passed against juvenile delinquents:

(i) Disciplinary measures: reprimand or sending to a disciplinary centre for juveniles;

(ii) Stepped-up surveillance by parents, foster parents or custodians or some other family members; surveillance by the competent social organ; and

(iii) Institutional educational measures which imply sending juvenile delinquents to: (a) educational institutions; (b) educational and correctional institutions; or (c) special institutions for treatment and rehabilitation.

13. The Law on the Enforcement of Criminal Sanctions provides for the way of implementing educational measures against juveniles:

(a) A juvenile in need of constant surveillance by expert tutors in a general-purpose educational institution is sent to an educational institution for between six months and three years. The court determines the duration of this measure subsequently rather than at the time of adopting it. In the educational institution, a juvenile has the same rights and obligations as other wards, while special educational and surveillance attention is devoted to him. Only the head of the institution and his/her tutor know that a juvenile has been sent to the institution by a court order, while other wards are unaware of the fact. Every six months, or earlier at the request of the court, the educational institution advises the court and the trusteeship organ of the progress of the measure;

(b) A juvenile delinquent with respect to whom it is necessary to pass stricter measures of re-education is sent to an educational-correctional institution for between one and five years. These are specialized establishments for the re-education of juvenile delinquents. Rather than at the time of adopting it, the court will determine the duration of this measure subsequently, depending on the behaviour of a juvenile in an educational-correctional institution and the progress of his/her re-socialization. The average duration is between two and three and a half years.

14. Within the first 30 days, a juvenile in an educational-correctional institution is socially, medically, psychologically and pedagogically examined. Juveniles are treated in groups of at most eight persons according to their age, mental development and other personal characteristics, so that the same educational measures can be applied. Each group is headed by a tutor. There are 16 such institutions in the Federal Republic of Yugoslavia.

15. The re-education process includes the following measures:

Active participation in educational and correctional work for the purpose of acquiring and developing positive personal characteristics, which implies provision of appropriate education in the institution or a regular secondary school if no conditions for such education exist in the

institution. However, if the principal assesses that a juvenile has a negative influence on the behaviour of other students, the right of the juvenile to attend classes in a regular secondary school would be denied;

Active use of leisure time, including participation in culture, entertainment, art, sport and other activities;

Maintenance of contacts with family and other persons and organs important for re-socialization of the juvenile.

16. If a juvenile does not attend school, he/she works in accordance with the rules and regulations on the work of under age persons. A juvenile in the educational-correctional institution also has the right to vacation of between 18 and 30 working days which is, as a rule, spent outside the institution.

17. The latest amendments to the Law on the Enforcement of Criminal Sanctions provide for the possibility of all wards, including juveniles deprived of their liberty, to practise religion.

18. Reward is provided for those juveniles who deserve it by their conduct, work discipline and other activities in the re-education process: they are allowed to spend some time outside the institution, attend cultural, art and sport events outside the institution, visit their families and relatives on weekends and holidays, participate in cultural and sport events outside the institution and have a seven-day leave.

19. A juvenile who does not observe the rules and discipline can be separated in a room for seven days. Coercion against juveniles in the institution is used only exceptionally and it includes physical force, typing up, separation, rubber truncheon, only if necessary to prevent an assault on an official, other juvenile or in the case of self-wounding. Firearms can be used against a juvenile only to prevent an imminent assault and if by other means of coercion the life of a juvenile or another person cannot be protected.

20. The educational-correctional institution is duty-bound to advise, at least every six months, the court and the trusteeship organ of the results of the measures applied.

21. The Law on the Enforcement of Criminal Sanctions provides for the obligation of the trusteeship organ (social work centre in the municipality in which a juvenile resides) to ensure a juvenile, after the completion of educational measures, financial assistance, employment, temporary accommodation and to work with his family to accept him adequately. In practice, however, due to the scarce material resources available to social work centres and general impoverishment, a juvenile leaving an educational-correctional institution is often left to himself/herself or his/her family, not infrequently the cause of his/her delinquency itself, so that recidivism is quite a common phenomenon.

22. (c) Juveniles are treated and rehabilitated in specialized institutions determined by the organs in charge of social and health care. These institutions are also duty-bound to advise the court and the trusteeship organ every six months of the progress in the implementation of educational measures

and upon a juvenile reaching maturity of the need to re-examine the necessity of his/her further stay in the institution or of replacing this educational measure by some other.

23. Only a older juvenile (over 16 years of age) who has committed a criminal act punishable with more than five years in prison can be sentenced to imprisonment in a juvenile prison. As has been already said, there is only one penal-correctional institution, i.e. juvenile prison, in the Former Republic of Yugoslavia. It consists of a number of modern facilities (dormitories, a school, a cultural centre and a hall with workshops). It provides education for 25 vocations and former wards frequently enrol in universities as part-time students upon completion of their terms. The conditions in this institution are very liberal so that the young people, who have become delinquent through an unfortunate concourse of circumstances, live as normal a life as possible. They do not wear typical prison uniforms and are not obliged to wear caps all the time. Daily meals contain 14,500 J and that figure can be increased if required (e.g. work on the prison farm).

24. On arrival at the prison, a team of experts (psychologists, pedagogues, social workers, doctors, tutors) examine a juvenile's abilities and possibilities for the correction of his/her behaviour considering the criminal act he/she has committed. On that basis, juveniles are classified into three groups: open stay (with 10-day leave outside the prison), half-open or closed stay and the plan and programme of educational and corrective work with juveniles is adjusted accordingly. All wards jointly serve their sentences in groups headed by tutors, and juveniles convicted for the same criminal acts or their accomplices are not put in the same group. The juveniles are worked with individually, in groups, and in various other ways applicable elsewhere in the world.

25. Although there is wide concurrence of opinion in Yugoslavia and in relevant foreign organizations and agencies that children deprived of their liberty in the Federal Republic of Yugoslavia should be provided with good-quality conditions in which to serve their terms, there is no doubt that an international exchange of experience in this field, rendered impossible by the United Nations sanctions, would highly benefit those who are the subject of this report.